

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company, Inc.)	
)	
v.)	Docket No. 08-0105
)	
Global NAPs Illinois, Inc.:)	
Complaint pursuant to Section 252(e) of)	
the Federal Telecommunications Act of)	
1996, 47 U.S.C. §252(e), and Sections)	
4-101, 10-101, and 10-108 of the Illinois)	
Public Utilities Act, 220 ILCS 5/4-101,)	
220 ILCS 5/10-101, and 220 ILCS 5/10-108))	
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STAFF'S RESPONSE TO GLOBAL NAPs ILLINOIS, INC.'S
MOTION TO CONTINUE HEARINGS

Now comes the Staff of the Illinois Commerce Commission ("Staff"), by its attorneys, pursuant to Section 200.190 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.190, and, in response to Global NAPs Illinois, Inc.'s Motion to Continue Hearings, respectfully states as follows:

1. On February 27, 2008, the Administrative Law Judge (hereafter "ALJ") set this matter for evidentiary hearing on July 28-29, 2008. Tr. at 20-21. The ALJ subsequently ordered evidentiary hearings be reset to July 29-30, 2008. Notice of Continuance, July 8, 2008.

2. On July 24, 2008, Global NAPs Illinois, Inc. (hereafter "Global Illinois") filed its Motion to Continue Hearings (hereafter "Motion"). See, *generally*, Motion.

3. In support thereof, Global Illinois states that on or about July 23, 2008, Global Illinois witness Jeffrey Noack was compelled to undergo back surgery on an emergency basis. Motion, ¶2. Global Illinois states that Mr. Noack's doctors have

advised him that he should not travel for some time to come. Id. In consequence thereof, Global Illinois states that Mr. Noack will be unable to attend the hearings on dates currently set. Id., ¶3. Global Illinois states that no Global Illinois employee has the expertise to adopt Mr. Noack's testimony. Id., ¶4.

4. Global Illinois further avers that Global Illinois' and the Illinois Bell Telephone Company's (hereafter "AT&T") respective counsel have attempted to craft a resolution that would address Mr. Noack's inability to appear, but have been unable to do so. Motion, ¶5. Global Illinois asserts that AT&T has not, to date, agreed to a continuance. Id.

5. Global Illinois asserts that "best way to address the inability of Mr. Noack to attend the hearing next week is to continue the hearings until he is able to travel." Motion, ¶6. Global Illinois states that it cannot, at this time, suggest when that might be. Id.

6. Global Illinois accordingly requests that the matter be continued "indefinitely". Motion, Prayer for Relief.

7. Staff is sympathetic to Mr. Noack's condition, and extends its hope that his recovery is quick and complete. Accordingly, Staff has no objection, on compassionate grounds, to continuing hearings in this matter to a date certain. Staff is not, however, prepared to acquiesce in an indefinite continuance. As Global Illinois correctly observes, the Commission must enter an order in this proceeding within one year of its filing. Motion, ¶7. More specifically, Section 10-108 of the Illinois Public Utilities Act provides that:

Whenever there shall be filed a complaint under Article IX of this Act regarding the rates, charges, classifications or services of a public utility,

the Commission shall make and render findings concerning the subject matter and facts complained of and enter its order based thereon not later than one year after the filing of such complaint unless all parties to the complaint proceeding under Article IX agree to a period of greater than one year, provided that any agreement to extend the one year period must be in writing and must be for a specified period of time not exceeding 60 days. The parties may enter into more than one agreement to extend time.

220 ILCS 5/10-108

8. As Staff reads Section 10-108, absent an agreement by all parties to exceed the one-year statutory deadline for Commission decision, the Commission has no authority to do so, either on its own motion or pursuant to the motion of a party, even for good cause shown. While Global Illinois avers that it consents to extending the date for decision, it does not appear that AT&T agrees to do so.

9. AT&T's Complaint is, as the Staff understands matters, "a complaint ... regarding the rates, charges, classifications or services of a public utility" insofar as AT&T alleges that Global Illinois has failed to pay AT&T's proper rates and charges. *See, generally, Complaint*. This being the case, and AT&T being apparently unwilling to continue the matter, it cannot be said that "all parties to the complaint ... agree to a period of greater than one year" for decision. Accordingly, the Commission is at present, and assuming no reconsideration by AT&T of its position, required by statute to resolve this matter within one year of AT&T's filing of its Complaint, which it did on February 13, 2008. *See Complaint*. Accordingly, the Commission must decide this matter on or prior to February 13, 2009.

10. This being the case, a general or indefinite continuance simply cannot be granted. The Staff accordingly recommends that the ALJ grant a continuance not to exceed six weeks. In the event that Mr. Noack has not recovered by that time, some

accommodation (e.g., permitting him to appear telephonically) might be made for his condition. In the alternative, the Staff notes that Global Illinois might broach to AT&T the possibility of waiving the cross-examination of James W. Hamiter, the AT&T witness who addresses the point-of interconnection questions that are the subject of Mr. Noack's testimony, in return for AT&T Illinois extending the identical courtesy to Mr. Noack, in which case the hearing might proceed as scheduled. However, any continuance in excess of six weeks would in the Staff's view, veer dangerously down a path to exceeding the statutory deadline.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

/s/

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July 24, 2008